IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.786 OF 1992.

Union of India : Appellants.

versus

M/s.Babulal Chandulal and Co. : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd May 2005.

ORAL ORDER

1. Heard Mr.Samant for the Union of India. Nobody is present for the respondent. Mr.Samant raised only one question. He contended that the railway receipt in this case was to the effect "said to contain" and burden was on the claimant to prove it which he has failed to discharge. I have considered this aspect regarding said to contain RR in number of appeals and have rejected this contention taking into consideration peculiar facts and circumstances of each case.

Here the goods were onions. 381 bags or packets were entrusted to the railway for carriage to Naini. The bags were found short. The claim was based on the assessment made. The defence was that there was no inordinate delay.

2. As per the railway receipt the railway have charged freight charges for the quantity and quality described in the railway receipt. The claim for damages is not in respect of all the bags mentioned in railway receipt. The damages claimed are in respect of loss of or damages to the part of the goods. And considering the charges levelled it has to be held that the railway has received at least that number of bags which were ultimately found to be short. Therefore, even if there is no evidence as to the actual number of bags loaded in wagons and even if the railway receipt mentioned said to contain, the railway cannot be permitted to contend that they did not receive even those number of bags for which the claim is lodged. If they are permitted to raise such plea then it would mean that the railway has issued receipts without receiving any number of bags from the applicant. It was contended by Mr.Samant on the basis of

their reply before the tribunal that the bags were not properly kept and the distance was not maintained. I do not find any substance in his submission. In view of this the appeal is required to be allowed.

3. The second contention of Mr.Samant was that the interest that was awarded by the tribunal at 12% was not proper in view of the judgment of this Court reported in **2005 (1) Mh.L.J.165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the same judgment earlier. Therefore, in view of this judgment the rate of interested is reduced to 9%. The appeal is required to be partly allowed. Hence the order :-

:ORDER:

The appeal is partly allowed. Amount ordered by the tribunal will carry interest at the rate of 9% per annum. No order as to costs of this appeal.

[D.G.DESHPANDE]

02/05/2005 JUDGE.